

102-Doc. 9, R-54

IN THE SUPERIOR COURT FOR THE COUNTY OF DAWSON
STATE OF GEORGIA

STATE OF GEORGIA,

vs.

TOMMY LEE WALDRIP,

Defendant.

FILE NO. 91-CR-300C

JURY TRIAL

HON. JOHN E. GIRARDEAU

OCTOBER 13, 1994

APPEARANCES OF COUNSEL:

On Behalf of the State:

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GEORGIA, DAWSON COUNTY
CLERK'S OFFICE, SUPERIOR COURT
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VOLUME IX

at 8:35 A.M. 12-9-94
Recorded in _____ Book _____ Page _____
This _____ day of _____ 19 _____
Paul, McCord
CLERK

1674

1 incarcerated, his mind has been going a little nuts, he
2 has been hearing voices, he has heard voices of people
3 he can identify, jailers, prosecutors, newscasters. He
4 has described a system of monitoring which he has felt
5 has been going into his brain without his permission,
6 and it rose to the level that Mr. Brannon and I were
7 quite concerned, in that we could not talk to him any
8 further without his fear of being overheard and
9 monitored.

10 That is when Dr. Currie, a clinical
11 psychologist from Atlanta, came into play and he
12 examined Mr. Waldrip. The results of his examination,
13 and he will testify to you, are that Mr. Waldrip is a
14 man of borderline, below average intelligence. He has
15 also exhibited episodes of psychotic behavior, and one
16 other feature that he has found through his testing --

17 MR. DARRAGH: Excuse me, Ms. Watson, Your
18 Honor, may we approach at the bench?

19 (Recorded bench conference).

20 THE COURT: How is this going to be used in
21 the trial?

22 MS. WATSON: There are reasons, I told you
23 what our defense was, there are reasons for the
24 different statements.

25 THE COURT: Is Dr. Currie going to testify

1 THE COURT: The evidence you shall give to
2 the Court and to the jury in the trial of this issue
3 between the State of Georgia and Tommy Lee Waldrip, who
4 is charged with murder and other crimes set forth in
5 Indictment Number 91-CR-300C shall be the truth, the
6 whole truth and nothing but the truth?

7 THE WITNESS: I do.

8 THE COURT: Very well.

9 RUSS McCLELLAN,
10 after being first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. DARRAGH:

13 Q Sir, would you state your full name and
14 present occupation, please?

15 A My name is Russ McClellan, I'm presently an
16 attorney in private practice.

17 Q And how long have you been in private
18 practice now?

19 A Since November, 1992.

20 Q And where do you practice, sir?

21 A I have an office in Cumming and I also have
22 an office in Roswell.

23 Q Prior to your present employment, what was
24 your immediately preceding employment?

25 A I was the chief assistant district attorney

1 for the Blue Ridge Judicial Circuit.

2 Q What counties does that --

3 A Forsyth and Cherokee.

4 Q Okay. How long did you hold that position?

5 A I was chief assistant for about three or
6 four years, I guess, and prior to that I was an
7 assistant district attorney. I was, I began my
8 employment there in November, 1984.

9 Q All right, sir. Would you briefly describe
10 for, though I suppose we will get into some evidence of
11 that here, would you briefly describe for the jury what
12 your duties were as chief assistant district attorney
13 and assistant district attorney?

14 A I was a trial assistant district attorney, I
15 prepared indictments, investigated cases, coordinated
16 law enforcement, interviewed witnesses and actually
17 tried cases in my two-county circuit.

18 Q In the context of those duties, sir, can you
19 testify as to whether or not you had any involvement
20 with any trials against one named John Mark Waldrip?

21 A Yes, I did.

22 Q Do you know how John Mark Waldrip is
23 related, if he is, to the defendant Tommy Lee Waldrip?

24 A John is his son.

25 Q All right, sir. Do you recall what John

1 Q All right, sir. I'm going to show you that
2 which I have shown counsel, which is marked State's
3 Exhibit 106. Can you tell me whether you can identify
4 that particular document?

5 A Yes.

6 Q And what is that particular document?

7 A It appears to be the testimony of Keith
8 Evans in that trial.

9 Q All right, sir.

10 MR. DARRAGH: Your Honor, I'm going to
11 tender State's Exhibit 106 and ask that I be allowed
12 to --

13 BY MR. DARRAGH:

14 Q First of all, were you the attorney asking
15 the questions of Keith Evans in that trial?

16 A Yes, I was.

17 MR. DARRAGH: That I be asked to be Russ
18 McClellan as far as reading questions and that Mr.
19 McClellan be able to testify further about the answers
20 of Keith Lloyd Evans in that particular trial, and I do
21 tender 106 for that purpose.

22 MR. BRANNON: Your Honor, we would oppose
23 introduction of 106 for this reason. We haven't been
24 provided, at least to our knowledge, with a copy of that
25 document and have not had occasion to read it. I think

1 the witness can refresh his memory and testify to what
2 he did at that particular proceeding, but other than
3 that, I think it wouldn't be admissible and we object to
4 it on those grounds.

5 MR. DARRAGH: Your Honor, it would be
6 admissible for several reasons. It goes to the
7 motivation of what happened in the death of Keith Lloyd
8 Evans, what the testimony was and the import of that
9 testimony and why it was that Keith Evans was killed and
10 the extent to which that testimony was offered and what
11 impact it had, therefore it would be admissible for
12 those reasons.

13 Further, Keith Lloyd Evans is unavailable,
14 he cannot, of course, be here to testify, and I can lay
15 a further foundation as to the certification of that
16 particular document, but I ask that we be able to
17 proceed in that fashion. I'm not tendering it for the
18 purpose of going out with the jury, but to have his
19 testimony read here in court and then make it a part of
20 the record.

21 THE COURT: May I see the exhibit?

22 MR. DARRAGH: Further, it is directly
23 relevant to the testimony being offered by the witness.

24 THE COURT: Okay.

25 MR. BRANNON: Before the Court makes a

1 ruling, let me also add to it that the link has already
2 been established through this witness of the John Mark
3 Waldrip trial, in that case, so I -- and Mr. Evans was a
4 witness, I will object to the relevance of the entire
5 transcript, whatever the testimony was at that trial, I
6 don't think it is relevant to the issues in this trial
7 and so I object on those grounds also.

8 THE COURT: Your intent, Mr. Darragh, is to
9 go through the entire testimony, the question and
10 answer?

11 MR. DARRAGH: Yes, sir, for the particular
12 purpose of showing the import of that testimony and why,
13 Your Honor, it was important to influence this witness,
14 in the case of John Mark, Tommy Lee and Howard
15 Livingston.

16 THE COURT: The objection is overruled. You
17 may proceed as you have indicated you are, the statement
18 will be attached to the record but will not, or the
19 testimony will be attached to the record but will not go
20 out with the jury as an evidentiary exhibit.

21 MR. DARRAGH: Your Honor, my additional copy
22 is on its way, until it gets here, I will approach the
23 witness, if I may.

24 BY MR. DARRAGH:

25 Q I will be you, Mr. McClellan.

1 A Okay.

2 Q And ask the questions, if you will give the
3 answer that Keith Evans gave.

4 (Whereupon, the afore-mentioned testimony
5 was read).

6 BY MR. DARRAGH:

7 Q "Tell us your name and age to start with,
8 Keith?

9 A Keith Evans, 23.

10 Q And where are you living now?

11 A Decatur, Georgia.

12 Q How long have you lived there?

13 A Approximately five months.

14 Q Okay. And where did you live prior to that?

15 A Dawsonville, Georgia.

16 Q All right, are you working now?

17 A Yes.

18 Q Where are you working?

19 A Kroger Company.

20 Q And what is your position with Kroger?

21 A Customer service.

22 Q Could you tell us what that involves, just a
23 little bit, please?

24 A Assisting the customers and assisting the
25 front end people.

1 Q Okay. Prior to working for Kroger, where
2 did you work?

3 A Foodcenter.

4 Q And where is that located?

5 A Highway 9.

6 Q Here in Forsyth County?

7 A Yes.

8 Q How long had you worked there?

9 A Approximately four and a half years.

10 Q All right, how did you start out with
11 Foodcenter?

12 A Cashier.

13 Q Did you move up from cashier to some other
14 position?

15 A Yes, I did.

16 Q What position did you move up to?

17 A Well, when I left, my position was closing
18 manager.

19 Q All right. And tell me what that involves.

20 A I was responsible for the store, running the
21 store.

22 Q Okay. By closing manager, does that refer
23 to the shift that you worked, or what does that refer
24 to?

25 A Yes, worked almost all nights.

1 Q Okay. How long, what were the hours of the
2 store in the evenings?

3 A We closed at 10:00.

4 Q Okay. And were you open seven days a week?

5 A Yes.

6 Q Okay. Could you describe for me a little
7 bit what exactly you would do on a routine shift, what
8 your responsibilities were?

9 A Making sure the store was running properly,
10 I worked in the office most of the time, counting tills
11 and cashing checks.

12 Q Okay.

13 A Customer service.

14 Q If anybody that cashed a check, would they
15 have to come through you?

16 A Most of the time, yes.

17 Q What were the exceptions when they wouldn't
18 have to come through you?

19 A A cashier could have me approve a check and
20 she could cash the check.

21 Q So the cashier would still have to come to
22 you?

23 A Yes, most of the time."

24 MR. DARRAGH: I'm on page five, Counselor.

25 MR. BRANNON: Thank you.

1 MR. DARRAGH: At line 20, 21.

2 BY MR. DARRAGH:

3 Q "And you say you counted the money during
4 the shift an put it in the safe, things like that?

5 A Yes.

6 Q And when you were working at Foodcenter,
7 where were you living?

8 A In Dawsonville.

9 Q How long had you lived in Dawsonville?

10 A 23 years.

11 Q Now let me refer you back to the 27th of
12 December of last year. Were you working on that
13 evening?

14 A Yes.

15 Q What shift were you working?

16 A The evening shift.

17 Q What time did you come in to work on that
18 day?

19 A 2:00 o'clock.

20 Q Is that the normal time you would go to
21 work?

22 A Yes.

23 Q And did anything happen, did anything happen
24 while you were on that particular shift that --

25 A Yes, that evening, say 7:00, real close to

1 7:00, I was robbed.

2 Q Okay. Would you tell me about how that
3 happened, how that came about?

4 A I had left the courtesy counter and one of
5 my cashiers said that there was someone waiting at the
6 window for customer service, so I went back to the
7 courtesy counter to wait on the customer.

8 Q Uh-huh.

9 A And once I got inside the courtesy counter,
10 I was, the person I was waiting on threw a bag to me.

11 Q Uh-huh.

12 A And told me to fill the bag, he had a gun
13 like inside his pants and he had on a jacket and pulled
14 his jacket back and showed me the gun.

15 Q Okay.

16 A So --

17 Q What did you do after that?

18 A I went to the safe and I opened the safe and
19 I filled the bag.

20 Q And where was he while you were doing this?

21 A He was still standing at the window.

22 Q And where were his hands, could you tell
23 where his hands were?

24 A I don't recall.

25 Q Do you recall what he was wearing at all?

1 A He had on a brown jacket and jeans.

2 Q And how much of the gun were you able to
3 see?

4 A Just the handle of the gun.

5 Q Okay, where was the gun on his, where did he
6 have the gun?

7 A It was like to his side, like sticking in
8 his pants.

9 Q Okay. On what side of his body?

10 A On his left side.

11 Q Okay. Now, did he come, if you could maybe
12 step down to the chalkboard here, I don't know how good
13 you are at drawing, just do like a floor plan of the
14 front of the store and show me where the registers are
15 and where the courtesy counter is.

16 A The register is right here, seven registers.

17 Q Okay.

18 A The courtesy counter is here and the window
19 is right here.

20 Q And where is the door that you would go in
21 and out of?

22 A It was right here.

23 Q Okay.

24 A And the safe was right here, there was a
25 desk here.

1 Q Okay. When you first saw the person, where
2 was he?

3 A He was standing at the window right here.

4 Q Okay. And where did you go at that point?

5 A Well, I went in beside the counter and came
6 around to the window to see what the customer needed and
7 you know, like I say, threw the bag through the window.

8 Q How big of an opening is the window?

9 A Like --"

10 MR. DARRAGH: I'm sorry.

11 Q "How big of an opening is the window? Like
12 a standard money type window?

13 A Standard money window.

14 Q Okay. Does it have a depression underneath
15 it?

16 A No.

17 Q It's just --

18 A A flat surface.

19 Q Okay. You can go back to your seat now.

20 And the person that you saw that night, had you seen
21 that person before?

22 A Yes, I have.

23 Q How many times would you, would you say you
24 have seen that person?

25 A Five or more.

1 Q Where have you seen him?

2 A As a customer in the store.

3 Q Okay. And what was your contact with him as
4 a customer?

5 A Just like I recall cashing his check and I
6 saw him like in the store purchasing things.

7 Q Okay. Did you ever know him by name?

8 A No.

9 Q Do you see that person in the courtroom
10 today?

11 A Yes, I do.

12 Q Would you point him out, please?

13 A Yes. He's the gentleman right here.

14 Q Okay. Would you describe what he is wearing
15 for the record?

16 A He has on a brown suit and a white shirt.

17 Q Let the record reflect he is identifying the
18 defendant."

19 MR. DARRAGH: Your Honor, if I may pause
20 here at this moment and ask Mr. McClellan a question
21 before we continue.

22 THE COURT: Very well.

23 BY MR. DARRAGH:

24 Q Sir, you were in the courtroom at that time?

25 A Yes.

1 Q Asking the questions, is that correct?

2 A That's correct.

3 Q Did you see who it was that Keith Lloyd
4 Evans pointed out that you identified as the defendant?

5 A Yes, the defendant was John Mark Waldrip and
6 that is who we had on trial at that time.

7 Q And you previously testified he is the son
8 of Tommy Lee Waldrip, the defendant here?

9 A Correct.

10 MR. DARRAGH: Continue.

11 Q "Is there any doubt or any question in your
12 mind about who the person was that night?

13 A No.

14 Q Now, after he told you to fill up the bag,
15 tell me exactly what he did while you were filling up
16 the bag.

17 A I didn't look up at him when I filled the
18 bag. I filled the bag and the only things he said to me
19 when I was filling the bag was, "easy," so --

20 Q At what time did the store have any --"

21 MR. DARRAGH: Excuse me.

22 Q "At that time did the store have any alarms
23 or anything like that?

24 A No, it didn't.

25 Q Did he ever make any statements to you about

1 your hands or about an alarm or anything like that?

2 A No. Like I said, he said, "easy," you know,
3 like everything I did, you know, I assumed he was
4 watching my hands.

5 Q Okay. What is the angle of your view when
6 you are standing back here, is this a raised area?

7 A Yes, it's raised.

8 Q Would your eye level be about his eye level
9 or below or at the same height?

10 A It is just, it's a little bit above.

11 Q Okay. You said that he had the gun in the
12 left side of his pants?

13 A Right.

14 Q And showed his jacket like this?

15 A Uh-huh.

16 Q Could anybody else that was working in the
17 cash area have seen that from the way he was standing?

18 A No.

19 Q How far is it from the window to the safe,
20 how far did you have to go to get to the safe?

21 A It's about three or four feet.

22 Q Okay. And where is the safe as far as the
23 level, in other words, would you be able to stand and go
24 in the safe, or did you have to bend down?

25 A Either way, it was at the level you could

1 reach, either way.

2 Q Okay. From where the safe was and where he
3 was, was he able, was his line of vision, did it include
4 the inside of the safe?

5 A Yes, he could see inside the safe.

6 Q Okay. At what point did he tell you to
7 stop, or did he tell you to stop, as far as getting the
8 money out and putting it in the bag?

9 A Well, the money was laid out like laying
10 this way.

11 Q Uh-huh.

12 A And there was, there was like one more pack
13 of --

14 Q If you want to use your hand, the jury can't
15 see your hand. The money was laying like this,
16 indicating --

17 Q Okay.

18 A Like this, this was the safe, the money was
19 laying this way. I had picked up each stack of the
20 money, there was one stack left, and I don't know, maybe
21 he couldn't see my hand exactly where they were going
22 and he said, "stop, that's enough."

23 Q What denominations did you have in the safe
24 and what denominations did you put into the bag?

25 A It was bundles of ones, fives, and tens.

1 Q Okay. And was that how you normally bundled
2 the money?

3 A Yes.

4 Q And what quantity, I guess, bills do you
5 bundle together as a general rule?

6 A Ones are bundled in fifties, and we bundle
7 packs of fifties in stacks of 500 and then ones bundled
8 in one hundreds, two fifties and five hundreds.

9 Q Okay. And tens?

10 A And tens are bundled in 250 or 500.

11 Q Okay. And so the pack is a series of
12 bundles or a number of bundles, so there are 500 --"

13 MR. DARRAGH: Excuse me.

14 Q "500 one dollar bills would have been
15 bundled together?

16 A Right.

17 Q Did you put any of those bundles in the bag?

18 A Yes, I did.

19 Q Do you remember how many, roughly?

20 A There was approximately two or three packs
21 of ones.

22 Q Okay.

23 A And about --"

24 THE WITNESS: I think that is part of my
25 question.

1 Q "How about the next denomination up, five,
2 you said they were bundled in five hundreds or two
3 fifties?

4 A Yes, there were various amounts of fives and
5 tens, I couldn't be exact.

6 Q Okay. Do those get packed together in any
7 other denominations, or are they just --

8 A They are just left.

9 Q Okay. And what was the one that was
10 closest, ones up this way, or were they just stuck in
11 there at random?

12 A Just random.

13 Q Okay, what happened after he told you to
14 stop?

15 A I handed him the bag and he ran out of the
16 store.

17 Q Okay. Where, could you step down here and
18 show me where the doors are to the store?

19 A Okay. The big double door here, which is
20 usually always open.

21 Q Uh-huh.

22 A And there is double doors here, double doors
23 here and he ran out this door right here.

24 Q I guess I was a little bit confused, I was
25 drawing this as the front of the store, I guess this is

1 the back of the store, is that right?

2 A Yes.

3 Q So this is where all the merchandize is?

4 A Yes, uh-huh.

5 Q This is the front?

6 A Yes.

7 Q So if you walk in the front door, the
8 courtesy counter is to your left, or to your right?

9 A Yes.

10 Q Which way?

11 A Well, if you come in the store, it would be
12 to your left.

13 Q Okay. He went out the door across from, I
14 guess diagonally across the store?

15 A Right.

16 Q What did you do after he left?

17 A Once I saw he was out of sight I picked up
18 the phone and called the police.

19 Q And did he make any other statement while he
20 was there, other than what you have testified?

21 A No.

22 Q Did he tell you anything about calling the
23 police before he left?

24 A No, I don't recall him saying anything about
25 that.

1 Q Did you have any particular reason for
2 waiting until he was out of sight?

3 A I just, I wanted to make sure he was gone
4 because I didn't want him to turn around and see me on
5 the phone.

6 Q Okay. And how long did it take the police
7 to arrive?

8 A I would say three to five minutes.

9 Q And did you make any statements to the
10 police or give any kind of description of the person
11 that you saw?

12 A Yes, the next morning I went and did a
13 composite drawing of him.

14 Q Let me ask, in looking at the defendant
15 today, is there any marked difference in his appearance
16 today as far as his facial hair or length of his hair or
17 any other features you observed. His hair is a little
18 bit shorter and he had a mustache at the time.

19 Q Now, where did you say you were when you
20 first were drawn to his attention, somebody first drew
21 you to his attention?

22 A I was back at the frozen food cases.

23 Q Where are they in relation to the courtesy
24 counter?

25 A To the front?

1 Q Or to the front, yes.

2 A It was like three and a half aisles away.

3 Q Okay, in what direction?

4 A It would be, if you were facing the courtesy
5 counter, it would be to your right.

6 Q Back this way?

7 A Yes.

8 Q Okay, so the store goes back this way some
9 more?

10 A Yes.

11 Q Let me get the right lines in there and who
12 was it that drew your attention to him?

13 A It was the cashier, Becky Jennings.

14 Q Did you go immediately to the counter?

15 A Yes.

16 Q Where he was waiting?

17 A Uh-huh.

18 Q And how would you have gotten to the counter
19 from where you were?

20 A I had to walk by the courtesy counter and go
21 around and go in.

22 Q So, you had walked behind him?

23 A Yes.

24 Q Okay. And did you notice anything unusual
25 about him as you walked about?

1 A No, he was facing inside the courtesy
2 counter, I think.

3 Q And what was the first thing that happened
4 that you knew that something was wrong, something bad
5 was about to happen?

6 A Well, once I got in there and he threw me
7 the bag, now I knew I was being robbed.

8 Q Okay, what exactly did he say when he threw
9 you the bag?

10 A He said, "fill the bag."

11 Q At what point did he show the gun?

12 A After he said fill the bag.

13 Q Did anybody else come over to see what you
14 all were doing?

15 A No.

16 Q Is there a glass or anywhere besides right
17 there at that window?

18 A Yes, the upper part of the courtesy counter
19 is glass.

20 Q And where was the nearest cashier, let me
21 ask you that?

22 A She was on register five.

23 Q And what is the sequence that they go, start
24 at one and go away from the counter?

25 A Yes.

1 Q So, how far would she have been from the
2 counter?

3 A She was about, I would say 30 feet.

4 Q I believe you testified somebody coming to
5 the counter to get a check cashed or for some other
6 customer service, is that an unusual thing at that time
7 of the evenings?

8 A No.

9 Q Was there anything about that that would
10 have drawn anyone's attention to you or to him?

11 A No.

12 Q How long was he there, how long was the
13 defendant there in contact with you at the counter?

14 A About five minutes.

15 Q Now, at some later time were you called upon
16 to look at some pictures?

17 A Yes.

18 Q When was that?

19 A Numerous times.

20 Q Okay. When was the first time you were
21 asked to look at some pictures, was it the next day, or
22 weeks, or so, months?

23 A It was weeks, maybe.

24 Q Where were you when you were asked to do
25 that?

1 A The first time I looked at pictures, I was
2 at the police department.

3 Q Okay, what kind of pictures did you look at
4 there?

5 A They were, it was a card like containing
6 photographs of different people.

7 Q Okay. Do you recall which officers were
8 there?

9 A I don't remember which officer I talked to
10 that day.

11 Q Okay. Were you able to identify anybody out
12 of that particular picture spread?

13 A No.

14 Q Okay. How about at a later time?

15 A I saw, I would say there are four times I
16 looked at pictures of people.

17 Q Okay. Did you pick somebody out of any of
18 those pictures? Did you pick the defendant out of any
19 of those pictures?

20 A No. It was the last ones I was shown, that
21 I picked someone out.

22 Q Do you remember when that was?

23 A It was one day just as I had come in to
24 work, an officer came up to the store and showed me some
25 pictures.

1 Q Okay. Who was there with you when you took,
2 when that took place, was anybody in the store there
3 with you?

4 A Yes, there were other employees there, it
5 was at shift change time.

6 Q Okay. And did you identify out of that, and
7 who did you identify out of that picture spread?

8 A The man I identified today in the court
9 room.

10 Q And do you recall exactly when that was,
11 about how long after this incident?

12 A How long after, it was a few months after
13 that.

14 Q Now let me show you what has been marked as
15 State's Exhibit Number 1 and see if you can identify
16 first of all just the whole exhibit, not any particular,
17 but on the exhibit as a whole, the whole exhibit?

18 A Yes.

19 Q Okay. What is that?

20 A It's a photo, display folder.

21 Q Have you seen that folder before?

22 A Yes, I have.

23 Q When did you see that folder?

24 A This was the day I identified him.

25 Q Okay, and where were you, at the Foodcenter?

1 A Yes.

2 Q And which picture did you identify as the
3 defendant?

4 A Number three.

5 Q And is the person pictured in number three
6 the same person you identified today?

7 A Yes.

8 Q Mr. Evans, is there any question in your
9 mind as to, is there any question in your mind at all as
10 to the identification that you have made today and that
11 you made on that card or that lineup that John Mark
12 Waldrip is the person that came into your store and
13 robbed you on the 27th?

14 A No.

15 Q Thank you, sir."

16 MR. DARRAGH: Your Honor, at this time the
17 cross-examination proceeded. I would be glad to
18 continue in the fashion that I am if counsel would also
19 like the cross-examination.

20 MR. BRANNON: It will be fine if they
21 proceed in the same manner, Your Honor.

22 MR. DARRAGH: I will proceed.
23 Cross-examination by Mr. Rusty Jackson, and I will be
24 Mr. Jackson if you will continue to be Mr. Evans.

25 Q "Now, when the person that robbed you left

1 the store, did you get, did you see him get into any car
2 or anything of that nature?

3 A No.

4 Q Any car whatsoever that could be termed a
5 getaway car or whatever?

6 A No.

7 Q Now, from your description of the store area
8 here, would it be fair to say that when you walked into
9 the cashier's box, that was the first time, and turned
10 toward the person at the window, that's the first time
11 you were face to face with the person at the window, is
12 that right?

13 A Yes.

14 Q And what you were thinking is that you were
15 going to go up and cash someone's check, is that right?

16 A Very possibly.

17 Q Now, at, at what point did you first view
18 the person that was standing at the window?

19 A Face to face, or just when I walked into the
20 courtesy counter?

21 Q When you walked into the courtesy counter.

22 A Yes.

23 Q And then what is it, about five steps or so
24 from the entry to the courtesy counter, to the window?

25 A Well, three.

1 Q Three steps?

2 A Uh-huh.

3 Q Okay. So you walked one, two, three steps
4 and you were there, and the first thing that happened is
5 a bag that is thrown on the --

6 A Once I got in the courtesy counter, yes,
7 once I had stepped behind --

8 Q Was the bag thrown on the counter as soon as
9 you stepped inside the courtesy counter?

10 A Once I approached the window, yes.

11 Q Okay. As you were approaching the window,
12 the bag was thrown to the counter?

13 A Right.

14 Q And during those three steps you were
15 taking, the bag comes down on the counter?

16 A I only took three steps to the counter,
17 walked around like a corner like this.

18 Q Uh-huh.

19 A And I walked around the corner and was
20 approaching the window when the bag was thrown in.

21 Q Okay. As you walked into the entrance to
22 the courtesy counter and you looked down and you saw
23 someone standing?

24 A Uh-huh.

25 Q At the window?

1 A Right.

2 Q And you turned the corner, walked three
3 steps to the window, as you were walking down those
4 three steps the bag was placed down?

5 A Right.

6 Q Okay. And would it be fair to say that once
7 the bag was placed down, your attention was focused on
8 the bag that had been placed down?

9 A Right.

10 Q Then when you got to the courtesy counter
11 the person said fill the bag up and pulled his coat
12 back?

13 A Right.

14 Q And you viewed the gun?

15 A Right.

16 Q All right. Let me talk a second about the
17 gun. Is the jacket that you, the jacket that the person
18 was wearing, was it, was it a sports jacket he was
19 wearing, a suit coat like I am wearing?

20 A No.

21 Q Just a regular corduroy jacket, not a sports
22 coat?

23 A It had more of like a leather look to it.

24 Q Was it cut similar to this, did it hang
25 straight down?

1 A It was a little shorter than that jacket
2 that you have on.

3 Q Okay. And the gun was not visible until the
4 coat was pulled back, is that correct?

5 A Correct.

6 Q So as far as where the gun was on the
7 person, on the left side, it had to be back in this area
8 somewhere where the coat concealed it, is that right?

9 A It was a little further to the front.

10 Q A little further to the front, okay,
11 somewhere right in front of the person's side?

12 A Right.

13 Q The front side of his body, would you say it
14 was just in front of the person's side?

15 A Yes.

16 Q Just in front of the person's side and the
17 front side of his body?

18 A Right.

19 Q Now, all you saw of the gun was that it was
20 a brown handled revolver, is that right?

21 A Right.

22 Q Tell me exactly what you saw of the gun.

23 A I saw the top of the gun.

24 Q Oh, the top of the gun, the top of the gun
25 meaning the handle that you hold it by?

1 A Right.

2 Q And it had a brown color?

3 A Yes.

4 Q Could you tell what kind of material it was
5 that the handle was made out of?

6 A No.

7 Q You just saw the color brown?

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9 Q Could you see the barrel of the gun at all?

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11 Q You couldn't see, could you see the cylinder
12 that the bullets went in at all?

13 A Like the very top of it.

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15 A It was a dark brown color.

16 Q The cylinder where the bullets go in was
17 also a dark brown color?

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19 Q When the person pulled their coat back to
20 show you the gun, did they do it with their left hand?

21 A Yes.

22 Q Or right hand?

23 A Left hand.

24 Q Left hand. Now, I believe you said on
25 questioning by Mr. McClellan that you think the entire

1 time that this event was going on was five minutes?

2 A Approximately.

3 Q Okay. Now, the safe that you were taking
4 the money out of is in the same box?

5 A Right.

6 Q That you were in up there, is that correct?

7 A Correct.

8 Q It was on this side of the entry door to the
9 box, on the window side, or on the other side?

10 A The first block I have drawn there.

11 Q The first block there?

12 A That's the safe.

13 Q Okay. So you didn't have to move really
14 very far to get to the safe?

15 A No.

16 Q The safe, is it down on the floor?

17 A No, it's about level with you, you know.

18 Q You have to have a combination to get into
19 the safe, I suppose, is that right?

20 A No, not necessarily.

21 Q Okay. So the safe was not necessarily
22 locked?

23 A No.

24 Q And this particular type was not locked, so
25 you just had to turn a handle and open it?

1 A Right.

2 Q Okay, so you just turned the handle, opened
3 it and started putting money in the bag?

4 A Right.

5 Q And you said the bills were bundled in ones
6 and fives and tens?

7 A Correct.

8 Q And how would such a bundle of, say, ones,
9 how many ones would you put into a bundle to make a
10 bundle?

11 A You bundle them in packs of 50 and then we
12 bundled ten packs of 50 to make 500.

13 Q Okay. I'm talking about ones, you have got
14 one big bundle and it has 500 ones in it?

15 A Right.

16 Q Okay. So you just have to reach in and take
17 out one bundle, is that right?

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19 Q To get \$500, how about the tens, what size
20 are they bundled in to?

21 A We bundle those into 250 and 500.

22 Q Okay. So, is what you got out of the safe
23 basically, talking about \$3,000, talking about six
24 bundles of \$500 each?

25 A Yes.

1 Q Okay. So, that's what you did basically,
2 you took out six bundles or thereabouts?

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4 Q And put it in the bag before you had to
5 stop?

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7 Q Okay. And then gave the bag back to the
8 person who ran out of the store, I think you said?

9 A Yes.

10 Q Okay. Now, as you were putting the money in
11 the bag, your attention was focused on the fact you
12 were, what you were doing, taking the money out of the
13 safe and putting it into the bags, is that correct?

14 A Correct.

15 Q You were not looking at the person standing
16 at the window at that time, is that right?

17 A Right.

18 Q Now did you really have to move at all from
19 the safe to place the bag back on the counter where the
20 window is at or did you just kind of throw it up there?

21 A Just like a step or two.

22 Q A step, and did you place it up there or did
23 you toss it up there?

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1 bag and ran?

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4 process of doing that, do you think it actually took as
5 long as five minutes to go through all of that?

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7 Q Now, you said that you saw these
8 photographic lineups. You think you saw several of
9 them?

10 A Yes.

11 Q And by several, do you mean you at least saw
12 three or more?

13 A Yes.

14 Q And so the last one that has been identified
15 that you picked someone out of?

16 A Yes.

17 Q Okay. Now, after you identified this
18 photograph, were you ever asked in State's Exhibit
19 Number 1 here, were you ever asked to go to the jail or
20 anywhere else and view a group of people in an in-person
21 lineup?

22 A Yes, but that was before I saw that
23 particular --

24 Q That is what I'm asking you, after you saw
25 this, were you ever asked to do that?

1 A No.

2 Q And would it be fair to say that all these
3 pictures show basically the people depicted in them from
4 just below the shoulders up?

5 A Yes.

6 Q And you said Mr. Waldrip had been to the
7 Foodcenter before, is that correct?

8 A Yes.

9 Q And the business that you had had with him
10 there in the past was cashing his paychecks, is that
11 right?

12 A Yes.

13 Q That is one of the things that you do quite
14 often, is cash a lot of people's paychecks, say people
15 doing that particular thing, is that a fair statement?

16 A Yes.

17 Q Let me show you what I have marked as
18 Defendant's Exhibit Number 1. Do you recognize that?

19 A Yes.

20 Q What is that?

21 A That's the composite that I did.

22 Q Okay. How did you go about doing this
23 composite drawing?

24 A I used, I guess you could call slides, small
25 slips of plastic, used the different ones.

1 Q They give you different looks on persons,
2 different facial features?

3 A Yes.

4 Q Hairstyles?

5 A Yes.

6 Q Things of that nature?

7 A Yes.

8 Q By putting those together you come up with a
9 description of the person you think you saw, is that
10 right?

11 A Yes.

12 Q That is the composite you came up with. Is
13 that correct?

14 A Yes.

15 Q I believe that's all the questions I have at
16 this time." Mr. Jackson said, then Mr. McClellan said,
17 "Just a few more questions." And then Mr. McClellan
18 continued with redirect examination. And I will be you
19 now.

20 Q "Now, when you, I believe you said earlier
21 about the cashing of checks, where did you usually cash
22 them, at the courtesy counter, where did you cash the
23 checks that you cashed for the defendant on prior
24 occasions, where were you when you cashed those checks?

25 A Courtesy counter.

1 Q Is it possible for someone standing at the
2 courtesy counter to see the safe if you are standing
3 there cashing their check?

4 A Yes.

5 Q Can they see the safe?

6 A Uh-huh, yes.

7 Q Can that person see the condition the safe
8 is in, that is, that it is not normally closed or
9 locked?

10 A If you looked at it the way the door, the
11 door is usually closed, you would assume it's locked.

12 Q Okay. But you can plainly see that it's a
13 safe, that it is a safe?

14 A Yes.

15 Q And did you say that you did not have to
16 have a combination to open it?

17 A No.

18 Q How did you open this safe?

19 A You just lift the handle to open the door.

20 Q What kind of safe is it, has it got any
21 combination?

22 A Yes, it does.

23 Q On the outside?

24 A Yes.

25 Q Does it have a handle?

1 A Yes.

2 Q And describe the handle to me again.

3 A It is just a lift handle, you lift it up on
4 the door and you pull it and --

5 Q Is it like a lever?

6 A Yes.

7 Q Like a car door?

8 A No.

9 Q Now, have you ever cashed checks when you
10 have had the safe open for some reason, or do you have
11 to go to the safe to get the money to cash the checks?

12 A There has been times I went to the safe to
13 get money.

14 Q Is there any other cash drawer in the
15 courtesy counter area where you cash a check?

16 A Just the register itself.

17 Q Okay. Where is that located?

18 A It is beside the window, it's to the, if you
19 are facing the counter, it would be to your right.

20 Q To your right, so if you are working, it
21 would be to your left?

22 A Correct.

23 Q When did you first realize you had seen the
24 defendant before that night, when did you first realize
25 you had seen him?

1 A When? When I walked to the courtesy
2 counter.

3 Q And did you tell anybody that was
4 investigating this case that you had seen him before?

5 A Yes.

6 Q Who did you tell?

7 A I told all the officers that I talked to.

8 Q And when you, going back to this lineup here
9 that you looked at, this photo display, all the
10 photographs you have seen, did you select any other
11 photographs other than the one that you showed me,
12 number three on this exhibit?

13 A No, I did not.

14 Q As the person that was there that night? I
15 believe you said you went to an in-person lineup on
16 another --

17 A Yes, I did.

18 Q -- time, and was that before you were shown
19 this particular --

20 A Yes.

21 Q -- this particular photo? Where was that
22 conducted?

23 A At the jail.

24 Q And did you identify anybody out of that
25 lineup?

1 A No.

2 Q Before that lineup and before you were shown
3 any of these pictures, did the officers suggest anything
4 to you as to whether someone was or was not in a
5 particular lineup or photographs, as to who might be in
6 there?

7 A They said they thought they had the person
8 but, you know --

9 Q At which point was that?

10 A Well, there was one or two times they said
11 they thought they had the person.

12 Q Was one of those times with this lineup?

13 A No.

14 Q Did that influence your decision in any way?

15 A No.

16 Q Their statement that they thought they had
17 the person, now with regard to these pictures, was this
18 how they were shown to you, just like this?

19 A Yes.

20 Q Were you ever shown pictures of any of these
21 people individually before you were shown this?

22 A Not that I recall, no.

23 Q Okay. Did any officers suggest to you which
24 pictures to select out of that lineup?

25 A No.

1 Q Have you had any occasion to see the
2 defendant since the robbery, before court this week?

3 A Yes, I did.

4 Q Where did you see him?

5 A It was, I had come home one weekend, well,
6 it was during the week.

7 Q Uh-huh.

8 A To visit my family and I was in a
9 convenience store in Dawsonville and I saw him outside
10 the convenience store.

11 Q That was in Dawsonville?

12 A Yes.

13 Q Your parents live in Dawsonville?

14 A Yes, correct.

15 Q And you were living up there at the time?

16 A I was visiting.

17 Q Visiting, okay. And that was when?

18 A I would say that was in June or July.

19 Q Of this year?

20 A Yes.

21 Q Or last year?

22 A Yes, this year.

23 Q And was that after you had identified this
24 photograph?

25 A Yes.

1 Q Thank you.

2 A Uh-huh."

3 MR. DARRAGH: The Court said, "Anything
4 further?" Mr. Jackson said, "No, sir." Mr. McClellan
5 said, "No further questions." The Court asked him to
6 step down.

7 Your Honor, that concludes the reading of
8 that testimony of Keith Lloyd Evans at the initial trial
9 of John Mark Waldrip.

10 BY MR. DARRAGH:

11 Q Sir, you were familiar with and were
12 handling that case, is that correct?

13 THE COURT: Mr. Darragh, I think we will
14 break at this point. We're going to take our noon
15 recess. Ladies and gentlemen, we're going to use the
16 clock inside the courtroom here as the official time, so
17 if you would, just coordinate your watches with the
18 clock that is here. Remember your precautionary
19 instructions I gave you this morning. We will be in
20 recess for one hour.

21 (Jury excused from the courtroom).

22 (Noon recess).

23

24

25

1 car and John was fixing to get in it and he hollered and
2 we started talking, and he walked over, like we were
3 pulling out of the drive, you know, moving and --

4 Q John walked over and talked to you at that
5 point?

6 A Uh-huh.

7 Q All right. What car was Tommy in?

8 A It was Linda's car.

9 Q Okay. Let me show you some -- excuse me,
10 this thing moves, I was going to lean on it, not a good
11 idea.

12 Ma'am, let me show you some exhibits that
13 are marked State's 21-P, 23-P and 28-P. Are you
14 familiar with this particular vehicle?

15 A Yes.

16 Q And what vehicle is that?

17 A Linda's car.

18 Q Okay. Is that the car that you saw Tommy
19 in?

20 A Yes.

21 Q Okay. Is that the car that you saw John
22 Mark about to get in between 9:00 and 9:30 on that
23 evening?

24 A Yes.

25 Q You had known John some time before this as

1 well, is that correct?

2 A Uh-huh.

3 Q Just a yes or no to this question at this
4 time. You still from time to time talk to John Mark
5 Waldrip on the telephone, is that correct?

6 A I did but I haven't talked to him probably
7 in eight or ten months, you know, at least.

8 Q Okay. How frequently before then did you
9 talk with him?

10 A I only talked to him a few times, I just
11 happened to be there, you know, when he had called.

12 Q Okay. Be where when he would call?

13 A At Kim Odom's.

14 Q Okay. Was Kim also a resident of the
15 Gravitt Apartments?

16 A Uh-huh.

17 Q And you would get on the phone with John and
18 have conversation with him?

19 A Yes, how you doing.

20 Q Okay. Now, the event following that
21 particular Saturday night, can you testify as to whether
22 or not you observed Tommy Waldrip around the apartments
23 prior to his being arrested?

24 A Uh-huh.

25 Q Did he come and talk to you?

1 A Right.

2 Q And you turned the corner, walked three
3 steps to the window, as you were walking down those
4 three steps the bag was placed down?

5 A Right.

6 Q Okay. And would it be fair to say that once
7 the bag was placed down, your attention was focused on
8 the bag that had been placed down?

9 A Right.

10 Q Then when you got to the courtesy counter
11 the person said fill the bag up and pulled his coat
12 back?

13 A Right.

14 Q And you viewed the gun?

15 A Right.

16 Q All right. Let me talk a second about the
17 gun. Is the jacket that you, the jacket that the person
18 was wearing, was it, was it a sports jacket he was
19 wearing, a suit coat like I am wearing?

20 A No.

21 Q Just a regular corduroy jacket, not a sports
22 coat?

23 A It had more of like a leather look to it.

24 Q Was it cut similar to this, did it hang
25 straight down?

1 A It was a little shorter than that jacket
2 that you have on.

3 Q Okay. And the gun was not visible until the
4 coat was pulled back, is that correct?

5 A Correct.

6 Q So as far as where the gun was on the
7 person, on the left side, it had to be back in this area
8 somewhere where the coat concealed it, is that right?

9 A It was a little further to the front.

10 Q A little further to the front, okay,
11 somewhere right in front of the person's side?

12 A Right.

13 Q The front side of his body, would you say it
14 was just in front of the person's side?

15 A Yes.

16 Q Just in front of the person's side and the
17 front side of his body?

18 A Right.

19 Q Now, all you saw of the gun was that it was
20 a brown handled revolver, is that right?

21 A Right.

22 Q Tell me exactly what you saw of the gun.

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24 Q Oh, the top of the gun, the top of the gun
25 meaning the handle that you hold it by?

1 A Right.

2 Q And it had a brown color?

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4 Q Could you tell what kind of material it was
5 that the handle was made out of?

6 A No.

7 Q You just saw the color brown?

8 A Right.

9 Q Could you see the barrel of the gun at all?

10 A No.

11 Q You couldn't see, could you see the cylinder
12 that the bullets went in at all?

13 A Like the very top of it.

14 Q Did you notice what color that was?

15 A It was a dark brown color.

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17 also a dark brown color?

18 A Yes.

19 Q When the person pulled their coat back to
20 show you the gun, did they do it with their left hand?

21 A Yes.

22 Q Or right hand?

23 A Left hand.

24 Q Left hand. Now, I believe you said on
25 questioning by Mr. McClellan that you think the entire

1 time that this event was going on was five minutes?

2 A Approximately.

3 Q Okay. Now, the safe that you were taking
4 the money out of is in the same box?

5 A Right.

6 Q That you were in up there, is that correct?

7 A Correct.

8 Q It was on this side of the entry door to the
9 box, on the window side, or on the other side?

10 A The first block I have drawn there.

11 Q The first block there?

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13 Q Okay. So you didn't have to move really
14 very far to get to the safe?

15 A No.

16 Q The safe, is it down on the floor?

17 A No, it's about level with you, you know.

18 Q You have to have a combination to get into
19 the safe, I suppose, is that right?

20 A No, not necessarily.

21 Q Okay. So the safe was not necessarily
22 locked?

23 A No.

24 Q And this particular type was not locked, so
25 you just had to turn a handle and open it?

1 A Right.

2 Q Okay, so you just turned the handle, opened
3 it and started putting money in the bag?

4 A Right.

5 Q And you said the bills were bundled in ones
6 and fives and tens?

7 A Correct.

8 Q And how would such a bundle of, say, ones,
9 how many ones would you put into a bundle to make a
10 bundle?

11 A You bundle them in packs of 50 and then we
12 bundled ten packs of 50 to make 500.

13 Q Okay. I'm talking about ones, you have got
14 one big bundle and it has 500 ones in it?

15 A Right.

16 Q Okay. So you just have to reach in and take
17 out one bundle, is that right?

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24 bundles of \$500 each?

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5 stop?

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11 the bag, your attention was focused on the fact you
12 were, what you were doing, taking the money out of the
13 safe and putting it into the bags, is that correct?

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16 at the window at that time, is that right?

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20 Q To your right, so if you are working, it
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22 A Correct.

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24 defendant before that night, when did you first realize
25 you had seen him?

1 A When? When I walked to the courtesy
2 counter.

3 Q And did you tell anybody that was
4 investigating this case that you had seen him before?

5 A Yes.

6 Q Who did you tell?

7 A I told all the officers that I talked to.

8 Q And when you, going back to this lineup here
9 that you looked at, this photo display, all the
10 photographs you have seen, did you select any other
11 photographs other than the one that you showed me,
12 number three on this exhibit?

13 A No, I did not.

14 Q As the person that was there that night? I
15 believe you said you went to an in-person lineup on
16 another --

17 A Yes, I did.

18 Q -- time, and was that before you were shown
19 this particular --

20 A Yes.

21 Q -- this particular photo? Where was that
22 conducted?

23 A At the jail.

24 Q And did you identify anybody out of that
25 lineup?

1 A No.

2 Q Before that lineup and before you were shown
3 any of these pictures, did the officers suggest anything
4 to you as to whether someone was or was not in a
5 particular lineup or photographs, as to who might be in
6 there?

7 A They said they thought they had the person
8 but, you know --

9 Q At which point was that?

10 A Well, there was one or two times they said
11 they thought they had the person.

12 Q Was one of those times with this lineup?

13 A No.

14 Q Did that influence your decision in any way?

15 A No.

16 Q Their statement that they thought they had
17 the person, now with regard to these pictures, was this
18 how they were shown to you, just like this?

19 A Yes.

20 Q Were you ever shown pictures of any of these
21 people individually before you were shown this?

22 A Not that I recall, no.

23 Q Okay. Did any officers suggest to you which
24 pictures to select out of that lineup?

25 A No.

1 Q Have you had any occasion to see the
2 defendant since the robbery, before court this week?

3 A Yes, I did.

4 Q Where did you see him?

5 A It was, I had come home one weekend, well,
6 it was during the week.

7 Q Uh-huh.

8 A To visit my family and I was in a
9 convenience store in Dawsonville and I saw him outside
10 the convenience store.

11 Q That was in Dawsonville?

12 A Yes.

13 Q Your parents live in Dawsonville?

14 A Yes, correct.

15 Q And you were living up there at the time?

16 A I was visiting.

17 Q Visiting, okay. And that was when?

18 A I would say that was in June or July.

19 Q Of this year?

20 A Yes.

21 Q Or last year?

22 A Yes, this year.

23 Q And was that after you had identified this
24 photograph?

25 A Yes.

1 Q Thank you.

2 A Uh-huh."

3 MR. DARRAGH: The Court said, "Anything
4 further?" Mr. Jackson said, "No, sir." Mr. McClellan
5 said, "No further questions." The Court asked him to
6 step down.

7 Your Honor, that concludes the reading of
8 that testimony of Keith Lloyd Evans at the initial trial
9 of John Mark Waldrip.

10 BY MR. DARRAGH:

11 Q Sir, you were familiar with and were
12 handling that case, is that correct?

13 THE COURT: Mr. Darragh, I think we will
14 break at this point. We're going to take our noon
15 recess. Ladies and gentlemen, we're going to use the
16 clock inside the courtroom here as the official time, so
17 if you would, just coordinate your watches with the
18 clock that is here. Remember your precautionary
19 instructions I gave you this morning. We will be in
20 recess for one hour.

21 (Jury excused from the courtroom).

22 (Noon recess).
23
24
25

1 Waldrip.

2 Q All right, sir. Before we proceed with some
3 more documentation, can I ask you, please, do you have a
4 personal recall as to what Keith Evans' attitude was,
5 demeanor was in reference to coming to court or in
6 reference to any court actions prior to the first trial?

7 A He was very cooperative. He had no trouble,
8 as I recall, we had no trouble getting him to appear
9 when we needed him and that sort of things.

10 Q Prior to the first trial did you notice in
11 him from your personal observations any apprehension
12 prior to the first trial?

13 A None more than any, you know, witness in a
14 similar case would have about testifying at all and
15 about testifying in an armed robbery case where they
16 were the victim.

17 Q As to the second time that the matter was to
18 come up for trial on April 15th, 1991, did you make any
19 personal observations or could you make any personal
20 observations, from your recall, about his demeanor in
21 reference to that?

22 A Yes. I think I would have to say he was a
23 little bit more reluctant this time around, apprehensive
24 about testifying.

25 Q Okay. Was he nonetheless cooperative?

1 A Oh, yes, cooperative. I don't know whether
2 it may have been frustration with the system, that sort
3 of thing.

4 Q All right, let me ask you this, sir. Can
5 you testify as to whether or not Rusty Jackson, who
6 represented John Mark Waldrip in the first trial, filed
7 any motions following John Mark Waldrip's conviction?

8 A Yes, he did, he filed a motion for new
9 trial.

10 Q Did that matter come on for hearing?

11 A Yes.

12 Q Was there a motion for new trial granted in
13 that case by the trial judge who had heard the case
14 previously?

15 A Yes, I represented the State at that motion,
16 the motion was granted.

17 Q Do you recall, then, from your own personal
18 knowledge as to the reasons the new trial was granted?

19 A Yes, I do.

20 Q And what was that reason?

21 A The reason was there was improper
22 communication by one of the bailiffs to the jurors
23 concerning their deliberations, and that formed the
24 basis, although I don't think that was the original
25 ground of the motion for new trial, that came out during

1 Cumming?

2 MR. DARRAGH: Your Honor, I object at this
3 time without proper impeachment of the witness through
4 appropriate methods, which have not been presented by
5 counsel.

6 THE COURT: Sustained.

7 MR. BRANNON: If we might, I need to respond
8 to that again, Judge.

9 THE COURT: If you are asking to ask that
10 question, I don't think it is going to do any good, but
11 if you want to try it, you can.

12 MR. BRANNON: For purposes of discovery, we
13 were only handed it the end of last week.

14 MR. DARRAGH: Your Honor, if this is going
15 to be a longer discussion, if we could have it at the
16 bench.

17 THE COURT: Approach the bench, please.

18 (Recorded bench conference).

19 THE COURT: Okay.

20 MR. BRANNON: My first response is, since he
21 has testified that he was and where he was incarcerated,
22 I should be allowed to ask anyway, because they have
23 opened the door for bringing that in. But if the
24 objection is what I'm going to impeach him with, it was
25 only given to us last Thursday afternoon and there is no